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SUPREME COURT, U.S.

Nos. 82-5279 and 82-5331

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ARTHUR DIXSON, PETITIONER

v.

UNITED STATES OF AMERICA

JAMES LEE HINTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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10/

QUESTION PRESENTED

Whether petitioners, as officers of a quasi-public corporation administering federal housing rehabilitation grants, are "public officials" within the meaning of 18 U.S.C. 201(c).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A10) 1/ is reported at 683 F.2d 195.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 1982. The petition for a writ of certiorari in No. 82-5279 was filed on August 24, 1982, and the petition in No. 82-5331 was filed on August 31, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

1/ "Pet. App." refers to the appendices in both Nos. 82-5279 and 82-5331, which contain the same record material and are identically paginated.

STATEMENT

Following a jury trial in the United States District Court for the Central District of Illinois, petitioners were convicted on nine counts of soliciting money in exchange for the award of housing rehabilitation contracts, in violation of 18 U.S.C. 201(c)(1) and (2) (Pet. App. A1). Each was sentenced to a term of 7½ years' imprisonment to be followed by three years' probation (82-5331 Pet. 4).

The evidence presented at trial established that during 1979 and 1980 the city of Peoria, Illinois, received a Community Development Block Grant and Metro Reallocation Grant from the United States Department of Housing and Urban Development (HUD), funded under the Housing and Community Development Act of 1974, 42 U.S.C. (& Supp. IV) 5301-5320. In accordance with the Act, the city contracted with a community-based, nonprofit corporation called United Neighborhoods, Incorporated (UNI) to administer the funds awarded to Peoria under the grant. Petitioner Dixson was Executive Director of UNI, while petitioner Hinton was its Housing Rehabilitation Coordinator (Pet. App. A1-A2).

In administering grant funds under the Act, UNI was responsible for soliciting bids from contractors to perform housing rehabilitation on eligible structures, and for awarding the contract to the successful bidder. Contractors were paid for their work by UNI from grant funds it received from the city, which in turn received the funds from HUD. The grant program administered by UNI was entirely sponsored by federal funds, which covered UNI's costs and the salaries of its employees. UNI had to account to the city for the expenditure of the grant funds, and the city was responsible for accounting to HUD for all funds it had received (Pet. App. A2, A4-A6).

Two contractors who received several housing contracts through UNI testified that petitioners had solicited money in exchange for the awarding of the contracts. In one case, the contractor received rehabilitation contracts for ten houses

pursuant to an agreement with petitioners to pay them ten percent of the amount of each contract (Pet. App. A2-A3). The contractor paid petitioners the agreed amount after cashing the checks he received from UNI for the work (id. at A3). Similarly, another contractor was told by petitioner Dixson that he should pay ten percent of the contract amount in order to receive the award. Petitioners told the contractor which houses he should bid on, recommended that the amount of one bid be lowered, and collected payment after the contractor received his check from UNI. Petitioner Hinton reassured the contractor that submitting the bids was just a formality (ibid.).

ARGUMENT

Petitioners contend (82-5279 Pet. 5-10; 82-5331 Pet. 6-10) that, as UNI employees, they cannot be considered "public officials" subject to the federal bribery and graft statute, 18 U.S.C. 201(c). This claim is without merit.

18 U.S.C. 201(c)(1) and (2) provide that it is a felony for any "public official" to demand and receive payments in return for being influenced in the performance of an official act, or for committing a fraud on the United States. Section 201(a) defines "public official" to include any person "acting for or on behalf of the United States, or any department, agency, or branch of Government thereof * * * ."

The court of appeals below correctly concluded (Pet. App. A3-A8) that petitioners were acting on behalf of an agency of the United States in administering HUD grant funds under 42 U.S.C. 5301-5320. Petitioners' salaries and the entire cost of UNI's operations were funded by the federal government for federal objectives, and petitioners exercised substantial authority in the expenditure of these federal funds. Furthermore, the statutory and regulatory framework of the Community Development Block Grant program provides for extensive federal involvement and supervision in the administration of grant funds, including federal eligibility and compliance standards, procurement and

performance criteria, and reporting, review and auditing requirements (Pet. App. A4-A6). For these reasons, the court of appeals concluded (id. at A8) that petitioners were "public officials" within the meaning of 18 U.S.C. 201(c).

a. This conclusion is fully supported by the legislative history of the federal bribery and graft statute and the decisions of other courts that have interpreted it. The Senate report accompanying the legislation that became 18 U.S.C. 201 makes clear Congress' intent that the term "public official" be "broadly defined" to include "persons carrying on activities for or on behalf of the Government." S. Rep. No. 2213, 87th Cong., 2d Sess., 7-8 (1962). The broad purpose of the statute, moreover, is "to protect the public from the evil consequences of corruption in public service." United States v. Mosley, 659 F.2d 812, 815-816 (7th Cir. 1981), quoting United States v. Griffin, 401 F. Supp. 1222, 1230 (S.D. Ind. 1975), aff'd, 541 F.2d 284 (7th Cir. 1976); see also United States v. Evans, 572 F.2d 455, 479-480 (5th Cir.), cert. denied, 439 U.S. 870 (1978).

To effectuate this purpose, courts have repeatedly held that a person who has authority in the expenditure of funds under a program sponsored and supervised by the federal government may be considered a "public official * * * acting for or on behalf of the United States" within the meaning of 18 U.S.C. 201. See United States v. Hollingshead, 672 F.2d 751, 753-754 (9th Cir. 1982) (upholding the conviction under 18 U.S.C. 201 of a Federal Reserve Bank employee with authority to recommend expenditure of federal funds, subject to approval by the Federal Reserve Board or its delegates); United States v. Mosley, supra, 659 F.2d at 814-816 (upholding the conviction under 18 U.S.C. 201 of a state employee with responsibility for determining applicants' eligibility for jobs federally funded under the Comprehensive Employment and Training Programs Act); United States v. Kirby, 587 F.2d 876, 879-880 (7th Cir. 1978) (upholding the conviction under 18 U.S.C. 201 of privately employed grain inspectors

licensed under federal law who had authority to issue certificates required by federal law); United States v. Gallegos, 510 F. Supp. 1112, 1113-1114 (D. N.M. 1981) (conviction under 18 U.S.C. 201 of a state employee responsible for administering federal grants to homeowners under the Farmers Home Administration (FHA) program and subject to supervision by an FHA official); United States v. Griffin, supra, 401 F. Supp. at 1230 (conviction under 18 U.S.C. 201 of an area management broker responsible for soliciting and receiving bids for rehabilitation of properties under the control of HUD). See also Harlow v. United States, 301 F.2d 361, 370-371 (5th Cir.), cert. denied, 371 U.S. 814 (1962), and United States v. Levine, 129 F.2d 745, 747-748 (2d Cir. 1942) (applying the bribery statute to other persons not on the payroll of the federal government).

In view of petitioners' roles in administering HUD grant funds and the extensive involvement and supervision of the federal government in that grant program, the court of appeals correctly concluded that petitioners were "public officials" subject to the sanctions of Section 201. A narrower application of Section 201 on the facts of the present case would emasculate the effect of its definitional phrase "on behalf of," and defeat the congressional directive that the term "public officials" be "broadly defined." S. Rep. No. 2213, supra, at 7-8.

b. Petitioners' reliance (82-5279 Pet. 5-6; 82-5331 Pet. 6-7) on United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976), and United States v. Del Toro, 513 F.2d 656 (2d Cir.), cert. denied, 423 U.S. 826 (1975), for the proposition that status as a "public official" depends on a person's "employment relationship with the federal government" is inapposite. The court below found (Pet. App. A6) that petitioners' salaries and the cost of the program they administered "were funded by the federal government for federal objectives" and petitioners "were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds." Clearly,

therefore, petitioners' key position within a federal program was a factor in the court's conclusion that petitioners were "acting on behalf of the United States." 18 U.S.C. 201(a). But the court did not consider this factor alone: it explained (Pet. App. A4) that "federal involvement in the Community Development Block Grant program differs significantly from what it had been in the Model Cities program" at issue in Loschiavo and Del Toro. The court specifically found that the Community Development Block Grant program involved substantially greater federal eligibility, performance, and compliance standards, more direct federal supervision, and more extensive reporting requirements than the program at issue in Loschiavo and Del Toro (id. at A3-A6). Thus, the facts of this case present much stronger support for the conclusion that petitioners were acting on behalf of the United States in administering HUD grant funds than did the record in Loschiavo or Del Toro. This factual distinction, not a conflict among the circuits, accounts for the different result. Cf. United States v. Hollingshead, supra, 672 F.2d at 753-754; United States v. Mosley, supra, 659 F.2d at 814-816, United States v. Gallegos, supra, 510 F. Supp. at 1113-1114. 2/

Petitioner Dixson's reliance (82-5279 Pet. 7-8) on United States v. Hollingshead, supra, and Slater v. United States, 562 F.2d 58 (1st Cir. 1976), is equally unavailing. Contrary to petitioner's implication (82-5279 Pet. 7), the court in Hollingshead did not agree that the Second Circuit had established its own "test" in Loschiavo and Del Toro, requiring a federal employment relationship. Instead, like the court of

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2/ The approach of the Loschiavo and Del Toro cases, moreover, has not been followed outside the Second Circuit. See, e.g., United States v. Hollingshead, supra; United States v. Mosley, supra. More recent cases have focused on practical realities in ascertaining who is a "public official" within the meaning of 18 U.S.C. 201, rather than on the technical classification of a person as a federal employee. See cases cited at pages 4-5, supra.

appeals in the present case, the court in Hollingshead factually distinguished Loschiavo and Del Toro. It found that the defendant was a "public official" because the circumstances before it were "similar to United States v. Mosley, [supra], 659 F.2d 812 (7th Cir. 1981)." United States v. Hollingshead, supra, 672 F.2d at 754; see also Pet. App. A3-A7. The court's statement in Slater v. United States, supra, is also entirely consistent with the opinion of the court of appeals in this case. The Slater court merely doubted whether 18 U.S.C. 201 applied to Model Cities program employees, as in Loschiavo and Del Toro, and expressed no views on the statute's application to persons administering the HUD Community Development Block Grant program under the circumstances here. 562 F.2d at 61.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the BRIEF FOR THE UNITED STATES IN OPPOSITION by First-Class Mail, on November 19, 1982, to:

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NOVEMBER 19, 1982

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